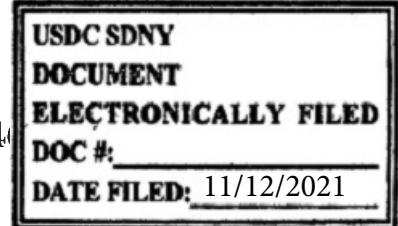


# Rubin, Fiorella, Friedman & Mercante L

Attorneys at Law  
630 Third Avenue, 3rd Floor  
New York, New York 10017  
Telephone: (212) 953-2381 / Facsimile: (212) 953-2444

Direct Dial 212.447.4639  
E-Mail:



November 10, 2021

Magistrate Judge Hon. Barbara Moses  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St., Courtroom 20A  
New York, NY 10007-1312

# MEMO ENDORSED

Re:	Case	Theodore Harper v. Railroad Construction Company, Inc. and National Railroad Passenger Corp.
	Case No.	19-CV-11864-PGG-BCM
	Our File	744.33712

Dear Judge Moses,

This is a joint letter submitted pursuant to the memo endorsed Order dated August 20, 2021 downloaded as Document No. 63.

This office represents defendants National Railroad Passenger Corporation (aka Amtrak) and Railroad Construction Company Inc. (hereinafter RCC).

Discovery in this case was delayed due to a late third-party action, coverage issues, substitution of counsel and dismissal of the third-party claim. Once those issues were resolved, this case has been moving along at a much more rapid pace. Plaintiff's deposition has taken place, as has depositions of defendants, Amtrak and RCC, in compliance with the dates set forth in the court's last endorsed memo.

Unfortunately, the defendants' project managers at the time of the subject incident are no longer employees of the defendants. Plaintiff has requested the last known addresses of John Ramo (Amtrak's then PM) and Kevin Clark (RCC's then PM) so that subpoenas may be served upon them for non-party depositions.

The operator of the construction vehicle, Elly Walters, who was allegedly unloading the rebar cages from the rail cart at the time of the incident, has been served with a non-party subpoena and a notice to take a non-party deposition for November 29, 2021 at 2 pm.

A non-party deposition of Matthew Fitzer who was directing the unloading of the rebar cages is expected to take place by December 15, 2021, in accordance with the prior Order, as he has agreed to appear voluntarily.

Magistrate Judge Hon. Barbara Moses  
Case No.: 19-CV-11864-PGG-BCM  
November 10, 2021  
Page 2

The deposition transcripts of the defendants' witnesses have not been received yet from the court reporting company. Plaintiff's counsel has been assured that he will have them within the week such that they may be reviewed and thorough post deposition demands timely served.

It is respectfully requested that the status conference scheduled for November 17, 2021 at 10 a.m. be allowed to take place virtually or that it be rescheduled to a date after the dates here proposed.

The parties have discussed whether a judicially supervised settlement conference would be productive and agree that a decision on that issue would best be left until after the completion of non-party depositions and should be addressed at or before the next conference.

Accordingly, it is respectfully requested that the following revised discovery schedule be adopted:

No later than November 22, 2021, the complete names and last known addresses of Kevin Clark and John Ramo shall be provided to plaintiff's attorneys via email.

No later than November 22, 2021, the parties shall serve post deposition demands to the previously conducted depositions.

No later than December 15, 2021, subpoenas shall be served on all non-party witnesses.

No later than December 22, 2021, the parties shall serve responses to the post deposition demands.

No later than December 31, 2021, any independent medical examination of plaintiff by the defendants' medical experts shall be completed.

No later than January 31, 2022, depositions of non-party witnesses shall be completed.

No later than February 28, 2022, all remaining fact discovery shall be completed.

The parties have consulted with respect to the foregoing and jointly consent to the terms of this status letter. The Court's valuable time and consideration to this request are graciously appreciated.

Application GRANTED. No further extensions shall be granted absent compelling circumstances. The status conference scheduled for November 17, 2021 is hereby ADJOURNED to **February 1, 2022, at 10:00 a.m.**, in Courtroom 20A of the Daniel Patrick Moynihan United States Courthouse. No later than **January 25, 2022**, the parties shall submit a joint status letter outlining the progress of discovery to date and advising the Court as to whether a judicially-supervised settlement conference would be productive. SO ORDERED.

Respectfully submitted,

*Stewart B. Greenspan*

Rubin Fiorella Friedman & Mercante LLP

cc: Law Offices of Michael T. O'Leary, PLLC  
Attorneys for Plaintiff Theodore Harper  
151 Broadway Hawthorne, New York 10532

E-mail: [stewart@mcmlawyer.com](mailto:stewart@mcmlawyer.com)  
Email: [molearylawyer@gmail.com](mailto:molearylawyer@gmail.com) and [molearylawyers@gmail.com](mailto:molearylawyers@gmail.com)

  
Barbara Moses  
U.S.M.J.  
November 12, 2021